

Chapter 120

STORMWATER MANAGEMENT

§ 120-1.	Definitions.	§ 120-6.	Performance and design criteria for stormwater management and erosion and sediment control.
§ 120-2.	Findings; purpose.		
§ 120-3.	General provisions.	§ 120-7.	Maintenance, inspection and repair of stormwater facilities.
§ 120-4.	Procedure.	§ 120-8.	Administration and enforcement; penalties for offenses.
§ 120-5.	Stormwater pollution prevention plans.		

[HISTORY: Adopted by the Town Board of the Town of Elma 4-15-2015 by L.L. No. 2-2015. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 52.

Excavations — See Ch. 75.

Filling and grading — See Ch. 77.

Flood damage prevention — See Ch. 82.

Storm sewers — See Ch. 115, Art. XV.

Site plan review — See Ch. 117.

Stormwater Management Overlay District — See Ch. 120A.

Subdivision of land — See Ch. 123.

Zoning — See Ch. 144.

§ 120-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated below:

AGRICULTURAL ACTIVITY — The activity of an active farm, including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

APPLICANT — A property owner or agent of a property owner who has filed an application for a land development activity.

BUILDING — Any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

CHANNEL — A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

CLEARING — Any activity that removes the vegetative surface cover.

DEDICATION — The deliberate appropriation of property by its owner for general public use.

DESIGN MANUAL — The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation), most recent version or its successor, including applicable updates, which serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER — A person who undertakes land development activities.

EROSION CONTROL MANUAL — The New York Standards and Specifications for Erosion and Sediment Control (Empire State Chapter of the Soil and Water Conservation Society, 2004), most current version or its successor, commonly known as the "Blue Book."

GRADING — Excavation or fill of material, including the resulting conditions thereof.

IMPERVIOUS COVER — Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snow melt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

INDUSTRIAL STORMWATER PERMIT — A State Pollutant Discharge Elimination System (SPDES) permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION — The process of percolating stormwater into the subsoil.

JURISDICTIONAL WETLAND — An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation."

LAND DEVELOPMENT ACTIVITY — Construction activity, including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one acre, or construction activity disturbing less than one acre of total land area that is part of a larger common plan of development or sale disturbing one acre or more in the aggregate, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER — The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

LICENSED PROFESSIONAL — A landscape architect or professional engineer licensed to practice his or her profession in New York State.

MAINTENANCE AGREEMENT — A legally recorded document that acts as a property deed restriction and

§ 120-1

which provides for long-term maintenance of stormwater management practices.

§ 120-1

NONPOINT SOURCE POLLUTION — Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

NYSDEC — The New York State Department of Environmental Conservation.

PHASING — Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

POLLUTANT OF CONCERN — Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

PROJECT — Land development activity.

RECHARGE — The replenishment of underground water reserves.

SEDIMENT CONTROL — Measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS — Cold-water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, or habitats for threatened, endangered or special concern species.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM CONSTRUCTION ACTIVITY, PERMIT NO. GP-02-01 — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s), PERMIT NO. GP-02-02 — A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

STABILIZATION — The use of practices that prevent exposed soil from eroding.

STOP-WORK ORDER — An order issued which requires that all construction activity on a site be stopped.

STORMWATER — Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT — The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT FACILITY — One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER (SMO) — An officer or employee designated by the Town Board to accept and review stormwater pollution prevention plans (SWPPPs), forward the plans to such employee, officer, or board of the Town of Elma which is reviewing an application for a construction activity requiring submission of a SWPPP, and inspect stormwater management practices.

STORMWATER MANAGEMENT OVERLAY DISTRICT — The overlay district created by the Town of Elma by local law¹ and consisting of all urbanized areas within the jurisdiction of the Town of Elma, as identified by the United States Census Bureau TIGER data, 2,000 Census, in two maps, attached hereto, entitled the "Buffalo, NY Urbanized Area Stormwater Entities as Defined by the 2,000 Census," dated October 21, 2002, as amended or revised.

STORMWATER MANAGEMENT PRACTICES (SMPs) — Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

1. Editor's Note: See Ch. 120A, Stormwater Management Overlay District.

§ 120-1

STORMWATER POLLUTION PREVENTION PLAN (SWPPP) — A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

§ 120-1

STORMWATER RUNOFF — Flow on the surface of the ground, resulting from precipitation.

SURFACE WATERS OF THE STATE OF NEW YORK — Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

WATERCOURSE — A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERWAY — A channel that directs surface runoff to a watercourse or to the public storm drain.

§ 120-2. Findings; purpose.**A. Findings.** It is hereby determined that:

- (1) Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- (2) Such stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- (3) Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- (4) Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;
- (5) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- (6) Substantial economic losses can result from these adverse impacts on the waters of the Town;
- (7) Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- (8) The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety; and
- (9) Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

B. Purpose. The purpose of this chapter is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in § 120-2A. This chapter seeks to meet those purposes by achieving the following objectives:

- (1) Meet the requirements of minimum measures four and five of the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s), Permit No. GP-02-02, or as amended or revised;
- (2) Require land development activities to conform to the substantive requirements of the SPDES General Permit for Stormwater Discharges from Construction Activity, Permit No. GP-02-01, or as amended or revised;
- (3) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
- (4) Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- (5) Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and

§ 120-2 § 120-2
(6) Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 120-3. General provisions.

- A. Applicability. This chapter shall be applicable to all land development activities within the Stormwater Management District.
- B. Stormwater Management District. The Stormwater Management District consists of all urbanized areas within the jurisdiction of the Town of Elma, as identified by the United States Census Bureau TIGER data, 2000 Census, in two maps, attached hereto, entitled the "Buffalo, NY Urbanized Area Stormwater Entities as Defined by the 2000 Census," dated October 21, 2002, as amended or revised. Such maps and any amendments or revisions thereto are hereby declared to be a part of this chapter and shall be filed at the Elma Town Hall.
- C. Exemptions. The following activities shall be exempt from review under this chapter:
 - (1) Agricultural activity;
 - (2) Silvicultural activity except that landing areas and log haul roads are subject to review under this chapter;
 - (3) Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility;
 - (4) Repairs to any stormwater management practice or facility deemed necessary by the SMO;
 - (5) Any part of a subdivision if a plat for the subdivision has been approved by the Town of Elma on or before the effective date of this chapter;
 - (6) Land development activities for which a building permit has been approved on or before the effective date of this chapter;
 - (7) Cemetery graves;
 - (8) Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles;
 - (9) Emergency activity immediately necessary to protect life, property or natural resources;
 - (10) Activities of an individual engaging in home gardening by growing flowers, vegetables or other plants primarily for use by that person and his or her family; and
 - (11) Landscaping and horticultural activities in connection with an existing structure.
- D. Conflict. Where the conditions imposed by any provisions of this chapter are either more restrictive or less restrictive than comparable conditions imposed by any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.
- E. Responsibility for administration. The SMO shall administer, implement, and enforce the provisions of this chapter. Such powers granted or duties imposed upon the SMO may be delegated, in writing, by the SMO as may be authorized by the Town.

§ 120-4. Procedure.

The procedures applicable to all land development activities subject to review under this chapter are as follows:

- A. The Town of Elma shall designate an SMO who shall accept and review all SWPPPs. The SMO may:
 - (1) Review the SWPPPs;
 - (2) Upon approval by the Town Board, engage the services of a registered professional engineer to review the SWPPPs, specifications and related documents at a cost not to exceed a fee schedule established by the Town Board; or
 - (3) Accept the certification of a licensed professional that the SWPPPs comply with the requirements of this chapter.
- B. For all land development activities subject to review and approval by the Building Inspector, Planning Board, or Town Board of the Town of Elma under floodplain development permit, site plan, or subdivision regulations, the applicant or developer shall be required to submit a SWPPP that complies with the requirements of this chapter to the SMO, and the land development activity shall be reviewed subject to the standards contained in this chapter.
 - (1) Initial review by SMO. Within 45 days of receipt of a SWPPP, the SMO shall forward the SWPPP, together with his or her recommendation to approve, approve with modifications, or disapprove the SWPPP, to the employee, officer, or board of the Town of Elma which is reviewing the application for approval of a land development activity requiring submission of a SWPPP. A recommendation of approval shall only be given if the SWPPP complies with the requirements of this chapter. In making a recommendation to approve with modifications or disapprove the SWPPP, the SMO shall state the reasons for the decision.
 - (2) Review by final reviewing body. The employee, officer, or board of the Town of Elma which is reviewing the application for approval of a land development activity shall review the SWPPP and recommendation of the SMO and shall act to approve, approve with modifications, or disapprove the SWPPP. Such reviewing board shall not act to approve the SWPPP unless it complies with the requirements of this chapter. If the reviewing board acts to approve with modifications or disapprove the SWPPP, the reviewing board shall state the reasons for the decision. In order to be approved, the applicant shall revise a SWPPP that has been approved with modifications or disapproved in accordance with the recommendations of the reviewing board and shall submit the revised SWPPP to such board for review.
- C. For all land development activities not subject to review by the Building Inspector, Planning Board or Town Board of the Town of Elma as provided in § 120-4B, the applicant or developer shall be required to submit a SWPPP that complies with the standards contained in this chapter to the SMO. Within 45 days of receipt of a SWPPP, the SMO shall approve, approve with modifications, or disapprove the SWPPP. Approval shall only be given if the SWPPP complies with the requirements of this chapter. In approving with modifications or disapproving the SWPPP, the SMO shall state the reasons for the decision in writing. In order to be approved, an applicant shall revise a SWPPP that has been approved with modifications or disapproved in accordance with the recommendations of the SMO and shall submit the revised SWPPP to the SMO for review.

§ 120-5. Stormwater pollution prevention plans.

- A. Stormwater pollution prevention plan requirement. No application for approval of a land development activity shall be reviewed and no land development activity shall be commenced until the SMO or such employee, officer, or board of the Town of Elma reviewing an application for approval of a land development activity requiring submission of a SWPPP has received a SWPPP that complies with the specifications in this chapter.
- B. Contents of stormwater pollution prevention plans.
 - (1) All SWPPPs shall provide the following background information and erosion and sediment controls:
 - (a) Background information about the scope of the project, including the location, type and size of the project;
 - (b) Site map/construction drawing(s) for the project, including a general location map. The site map should be at a scale of no smaller than one inch to 100 feet. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the land development activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges;
 - (c) Description of the soil(s) present at the site;
 - (d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the Erosion Control Manual, not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;
 - (e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
 - (f) Description of construction and waste materials expected to be stored on site with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill-prevention and response;
 - (g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;
 - (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
 - (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
 - (j) Temporary practices that will be converted to permanent control measures;
 - (k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
 - (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
 - (m) Name(s) of the receiving water(s);

§ 120-5

§ 120-5

- (n) Delineation of SWPPP implementation responsibilities for each part of the site;
 - (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
 - (p) Any existing data that describes the stormwater runoff at the site.
- (2) Land development activities meeting Condition A, B or C below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in § 120-5B(3) as applicable:
- (a) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on NYSDEC's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
 - (b) Condition B: stormwater runoff from land development activities disturbing five or more acres.
 - (c) Condition C: stormwater runoff from land development activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.
- (3) SWPPP requirements for Condition A, B or C (post-construction stormwater runoff controls):
- (a) All information in § 120-5B(1);
 - (b) Description of each post-construction stormwater management practice;
 - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice;
 - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
 - (e) Comparison of post-development stormwater runoff conditions with predevelopment conditions;
 - (f) Dimensions, material specifications and installation details for each post-construction stormwater management practice;
 - (g) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice;
 - (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
 - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with § 120-7.
- (4) The SWPPP shall be prepared by a licensed professional and must be signed by such professional, who shall certify that the design of all stormwater management practices meets the requirements in this chapter.
- C. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

D. Contractor certification.

- (1) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."
- (2) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- (3) The certification statement(s) shall be included with and become part of the SWPPP for the land development activity.

E. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

§ 120-5

§ 120-6

§ 120-6. Performance and design criteria for stormwater management and erosion and sediment control.

All land development activities shall be subject to the following performance and design criteria:

- A. Technical standards. For the purpose of this chapter, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this chapter:
 - (1) The Design Manual; and
 - (2) The Erosion Control Manual.
- B. Equivalence to technical standards. Where stormwater management practices are not in accordance with the technical standards set forth in § 120-6A, the applicant or developer must demonstrate equivalence to such technical standards.
- C. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

§ 120-7. Maintenance, inspection and repair of stormwater facilities.**A. Maintenance and inspection during construction.**

- (1) The applicant or developer of the land development activity or their representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this chapter. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.
- (2) For land development activities meeting Condition A, B, or C in § 120-5B(2), the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven days and within 24 hours of any storm event producing 0.5 inch of precipitation or more. Inspection reports shall be maintained in a site log book.
- (3) The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices.

B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Town of Elma to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this chapter. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Town of Elma.**C. Maintenance after construction.** The owner or operator of permanent stormwater management practices installed in accordance with this chapter shall ensure they are operated and maintained to achieve the goals of this chapter. Proper operation and maintenance also includes, as a minimum, the following:

- (1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this chapter.
- (2) Written procedures for operation and maintenance and training new maintenance personnel.
- (3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with § 120-6.
- (4) Maintenance agreements. The Town of Elma shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of the "Sample Stormwater Control Facility Maintenance Agreement" attached to this chapter as Appendix A.² The Town of Elma, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

2. Editor's Note: Appendix A is included as an attachment to this chapter.

§ 120-8. Administration and enforcement; penalties for offenses.**A. Construction inspection.****(1) Erosion and sediment control inspection.**

- (a) The SMO may require such inspections as necessary to determine compliance with this chapter and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this chapter and the SWPPP as approved. To obtain inspections, the applicant shall notify the SMO at least 48 hours before any of the following, as required by the SMO:

- [1] Start of construction;
- [2] Installation of sediment and erosion control measures;
- [3] Completion of site clearing;
- [4] Completion of rough grading;
- [5] Completion of final grading;
- [6] Close of the construction season;
- [7] Completion of final landscaping; and/or
- [8] Successful establishment of landscaping in public areas.

- (b) If any violations are found, the applicant and developer shall be notified, in writing, of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the SMO.
- (2) Stormwater management practice inspections. The SMO is responsible for conducting inspections of SMPs. All applicants are required to submit as-built plans for any SMPs located on site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer.
- (3) Inspection of stormwater facilities after project completion. Inspection programs shall be established on any reasonable basis, including, but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher-than-typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher-than-usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.
- (4) Submission of reports. The SMO may require monitoring and reporting from entities subject to this chapter as are necessary to determine compliance with this chapter.
- (5) Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Town of Elma the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in § 120-8A(3).

B. Performance guarantee.

- (1) Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town of Elma in its approval of the SWPPP, the Town of Elma may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Elma as the beneficiary. The security shall be in an amount to be determined by the Town of Elma based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town of Elma, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to Town of Elma. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.
- (2) Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town of Elma with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town of Elma may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.
- (3) Recordkeeping. The Town of Elma may require entities subject to this chapter to maintain records demonstrating compliance with this chapter.

C. Enforcement and penalties.

- (1) Notice of violation.
 - (a) When the Town of Elma determines that a land development activity is not being carried out in accordance with the requirements of this chapter, it may issue a written notice of violation to the landowner, developer, and/or applicant. The notice of violation shall contain:
 - [1] The name and address of the landowner, developer and/or applicant;
 - [2] The address when available or a description of the building, structure or land upon which the violation is occurring;
 - [3] A statement specifying the nature of the violation;
 - [4] A description of the remedial measures necessary to bring the land development activity into compliance with this chapter and a time schedule for the completion of such remedial action;
 - [5] A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and
 - [6] A statement that the determination of violation may be appealed to the Town Board by filing a written notice of appeal within 15 days of service of notice of violation.
 - (b) The landowner, developer, and/or applicant shall comply within 30 days of written notice of violation. The applicant must remediate violation.

- § 120-8 (2) Stop-work orders. The Town of Elma may issue a stop-work order for violations of this chapter. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Town of Elma confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this chapter. § 120-8
- (3) Violations. Any land development activity that is commenced or is conducted contrary to the provisions of this chapter may be restrained by injunction or otherwise abated in a manner provided by law.
- (4) Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.
- (5) Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this chapter, the SMO may prevent the occupancy of said building or land.
- (6) Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Elma may take necessary corrective action, the cost of which shall become a lien upon the property until paid.
- D. Fees for services. The Town of Elma may require any person undertaking land development activities regulated by this chapter to pay a fee and/or expense for review of SWPPPs and related inspections.
- E. The fee for review and permit process shall be as follows:
- (1) Single-family or two-family residences and construction activities at agricultural properties:
- (a) One to less than five acres: \$150.
- (2) All other projects:
- (a) One to less than five acres: \$500.
- (b) Five to less than 10 acres: \$1,000.
- (c) Over 10 acres: \$1,000, plus \$100 per additional acre.

